

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

Kent C. Foster,

Petitioner,

v.

Case No. 2:11-cv-133

**Warden, Chillicothe
Correctional Institution,**

**Judge Michael H. Watson
Magistrate Judge Kemp**

Respondent.

OPINION AND ORDER

On April 8, 2011, the Court dismissed this action, finding that it was a habeas corpus petition filed pursuant to 28 U.S.C. § 2254 and that it was not filed within the applicable one-year limitations period. On April 26, 2011, petitioner filed a motion for reconsideration in which he argues that his case was improperly construed as a habeas corpus petition and that it should not have been dismissed. He argues that the Court should grant him relief from judgment under Fed. R. Civ. P. 60(b)(4) and 60(b)(6).

Petitioner continues to argue that he was never properly indicted in the state court which convicted him and that he is therefore not a “state prisoner” and cannot have filed a habeas corpus petition under 28 U.S.C. § 2254. The Court previously considered and rejected that argument. It cannot properly be raised again in a motion for relief under Fed. R. Civ. P. 60(b) because “[t]he parties may not use a Rule 60(b) motion as a substitute for an appeal” *Hopper v. Euclid Manor Nursing Home, Inc.*, 867 F.2d 291, 294 (6th Cir.

1989). If petitioner believes the Court's prior order to have been legally erroneous, he may appeal it. However, he has presented no persuasive argument that the Court erred in issuing that order, and he is not entitled to relief under Rule 60(b). His motion for relief (ECF No. 8) is therefore **DENIED**.

IT IS SO ORDERED.



Michael H. Watson, Judge
United States District Court